

## **REMARKS**

### ***Summary of Office Action***

In the Office Action, the Examiner rejected Claims 1, 14-15, and 20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,016,856 issued to Wiggins (hereinafter "Wiggins") in view of U.S. Patent No. 6,341,265 issued to Provost et al. (hereinafter "Provost"). The Examiner also rejected Claims 2 and 3 under 35 U.S.C. § 103(a) as being unpatentable over Wiggins in view of Provost and further in view of U.S. Patent No. 5,890,129 issued to Spurgeon (hereinafter "Spurgeon"). Further, the Examiner rejected Claims 4-7 and 17-18 under 35 U.S.C. § 103(a) as being unpatentable over Wiggins in view of Provost and further in view of Spurgeon U.S. Patent No. 5,937,387 issued to Summerell et al. (hereinafter "Summerell"). Finally, the Examiner rejected Claims 8-13, 16, 19, and 21-28 under 35 U.S.C. § 103(a) as being unpatentable over Wiggins in view of Provost and further in view of Summerell. No other issues were presented.

### ***Summary of Amendments***

Upon entry of the present Response to Office Action, Claims 1, 3-7, 11-14, 16-20, 24-26, and 28 will have been amended. Additionally, Claims 2, 8-10, 15, 21-23, and 27 will have been cancelled and new Claims 29-37 will have been added. As such, Claims 1, 3-7, 11-14, 16-20, 24-26, and 28-37 remain currently pending. By the present amendment, Applicant submits that the rejections have been overcome and respectfully requests reconsideration of the outstanding Office Action.

*Applicant's Response*

1. Section 103(a) Rejection of Claims 1 and 20

The Examiner submits that Wiggins teaches a method for administering health care comprising generating a patient population by receiving a request from an individual to become a patient within said patient population; obtaining information from said individual; evaluating said data; and enrolling said individual as a patient within said patient population. *Office Action, Pages 2-3.* The Examiner, however, admits that Wiggins does not teach receiving a request from a patient for medical services; assessing said request and determining whether said request substantiates a specified clinical event; submitting a code corresponding to a single, specified medical service to be rendered in response to the clinical event; evaluating the code for clinical and financial appropriateness; or responding to said submission based upon said evaluation, wherein said response comprises either approval or disapproval. *Office Action, Page 3.* In order to overcome these numerous deficiencies, the Examiner cites Provost as teaching all of Applicant's independent claim elements lacking in Wiggins. *Id.* The Examiner further contends that it would have been obvious to one of ordinary skill in the art to combine these teachings because the delivery of health care services has shifted from individual physicians to large managed health maintenance organizations and because a careful review of payment requests minimizes fraud and unintentional errors and provides consistency of payment for the same treatment. *Office Action, Page 4.*

The Examiner further admits that Wiggins does not teach wherein in step (e) the evaluation is conducted by a hospitalist or case manager. *Office Action, Page 4.* In order to overcome this deficiency, the Examiner incorrectly interprets the medical technician of Provost to be the same as either a hospitalist or a case manager. *Id.* Additionally, the Examiner admits that neither Wiggins nor Provost teach that the information obtained in step (a), substep (ii), comprises demographic information of the individual's age, sex, medical history, and geographic vicinity. *Office Action, Pages 4-5.* In order to overcome this deficiency, the Examiner cites Spurgeon as teaching obtaining information comprising an

individual's age, sex, medical history, and geographic vicinity. *Office Action, Page 5*. The Examiner contends that one would be motivated to combine these three references because managed care requires a constant exchange of large amounts of information to determine if the claims made by health care providers are covered and conform to actuarial guidelines or medically appropriate treatment regimens. *Id.* Also, the Examiner admits that neither Wiggins nor Provost teach that the assessment in step (c) is performed by a primary care physician. *Office Action, Page 9*. In order to come this lacking of teaching, the Examiner cites Summerell as teaching that an assessment is made by a primary care physician. *Id.* The Examiner further contends that it would have been obvious to combine these three references because, "it provides a means to assess an individual's personal health habits and risk factors; estimate the individual's future risk of death, illness, or otherwise reduced quality of life, and provide counseling as to means of reducing this risk. These assessments take the form of mortality risk estimates and counseling phrases based upon relative risk." *Id.*

Applicant's independent Claim 1 as currently amended recites, inter alia, "... obtaining information from said individual in step (i), wherein said information is obtained by an in-person interview and wherein said information comprises demographic information related to said individual comprising the individual's age, sex, medical history and geographic vicinity pertaining to said individual's residence as well as the number of emergency room visits, number of hospitalizations and readmissions, patient pharmacy records, and medication compliance; ... assessing said request made in step b) and determining whether said request substantiates a specified clinical event, wherein said assessment is made by a primary care physician; ... submitting only a single CPT code corresponding to a single, specified medical service to be rendered in response to the clinical event specified in step (c); ... evaluating the single code submitted in step (d) for clinical and financial appropriateness, wherein said evaluation is performed by a hospitalist or case manager; and ...."

In contrast to the numerous cited references, Applicant's independent Claim 1 now recites several elements that are not taught or suggested by the prior art. Notably, Claim 1 now includes elements relating to an in-person interview to obtain the information, specific

types of information, an assessment made by a primary care physician, the submission of only a single CPT code, and an evaluation made by a hospitalist or case manager, none of which are taught or suggested by the cited references either alone or in combination. In particular, none of the cited references are believed to teach or suggest obtaining the information from the patient by an in-person interview. By utilizing an in-person interview the information is obtained first hand and is more readily assured of the accuracy of the provided information. This element is fully supported by the specification as originally filed, specifically in Paragraphs [0012] and [0028].

In regard to the type of information obtained, Applicant's independent Claim 1 now requires obtaining information comprising demographic information related to said individual comprising the individual's age, sex, *medical history* and geographic vicinity pertaining to said individual's residence *as well as the number of emergency room visits, number of hospitalizations and readmissions, patient pharmacy records, and medication compliance*. As is currently understood, the cited references do not teach or suggest obtaining a patient's medical history, number of emergency room visits, number of hospitalizations and readmissions, patient pharmacy records, and medication compliance. In particular, Spurgeon shows in Figure 5 a form that obtains a member's age, sex, and residence address, but does not obtain a patient's medical history, number of emergency room visits, number of hospitalizations and readmissions, patient pharmacy records, and medication compliance. This deficiency is not believed to be cured by any of the other cited references.

In regard to the assessment being made by a primary care physician, Summerell is drawn to an automated wellness system wherein the system, "collect[s] data directly from the patient." *Column 5, lines 60-62*. Summerell further teaches that the physician can augment this data with test results, but that it is the wellness system that, "analyzes patient data according to guidelines to determine suitable courses of action." *Column 5, lines 62-67*. As such, it can be seen that Summerell teaches away from the primary care physician rendering the assessment because, "this data collection task is difficult and time-consuming." *Column 5, lines 52-53*. Accordingly, it is not believed that Summerell or any of the other cited

references teach or suggest having the primary care physician make the assessment as is required by Applicant's independent Claim 1.

In regard to the submission of only a single CPT code, Provost discloses a form that may include multiple CPT codes (*See Figure 3, 12b*). Further, Provost discloses that, "Claim form 12B includes a plurality of fields 44 designed to receive and display diagnosis codes," and, "Claim form 12B also includes one or more fields 46 designed to receive and display treatment codes." *Column 9, lines 35-46*. Accordingly it can be seen that Provost does not teach or suggest the submission of only a single CPT code.

In regard to the evaluation being made by a hospitalist or case manager, Provost teaches that: "A medical technician at the offices of a health care provider operates a client computer that communicates with a remote server...the remote server performs an operation in response...to determine if these codes correspond to health care services that are approved for payment." *Column 5, line 66 to Column 6, line 11*. Accordingly, it can be seen that the Examiner's interpretation that a medical technician is the same as a hospitalist or a case manager is inappropriate. Provost is understood to teach that a medical technician, who does not necessarily have proper training to determine payability of a code, submits the code to a remote server, wherein the remote server makes the actual evaluation. As such, Provost's medical technician and Applicant's hospitalist or case manager cannot be considered to be the same. Furthermore, Provost teaches that the remote server makes the evaluation of payability, in contrast Applicant's independent Claim 1 requires that an experienced hospitalist or case manager makes the evaluation after receiving the codes.

Accordingly, Applicant submits that no proper combination of Wiggins, Provost, Spurgeon and Summerell discloses or suggests at least the above-noted features of the present invention alone or especially in combination as now presented in Claim 1, and thus, the rejection of at least independent Claim 1 under 35 U.S.C. § 103(a) is improper and should be withdrawn.

2. Section 103(a) Rejection of Claims 3-7, 11-14, 16-19, 24-26, and 28

Applicant further submits that the Claims 3-7, 11-14, 16-19, 24-26, and 28 are allowable at least for the reason that these claims depend on allowable independent Claim 1 and because these claims recite additional features that further define the present invention.

3. New Claims 29-37

Finally, Applicant respectfully submits that new Claims 29-37 are in condition for allowance and contain no new matter. Claim 29 is drawn to further limiting the information obtained and is discussed in Paragraph [0028] of the specification as originally filed. Claims 30-32 are drawn to obtaining information relating to specific diseases and are fully discussed in Paragraph [0028] of the specification as originally filed. Claim 33 is drawn to a time period for reassigning risk levels and is fully described in Paragraph [0031] of the specification as originally filed. Claim 34 is drawn to evaluating the submitted code for various fraudulent activities and is fully described in Paragraph [0038] of the specification as originally filed. Claims 35-37 are drawn to an embodiment of Applicant's invention wherein the treatment is for a chronic condition and is fully described in Paragraphs [0047] and [0048] of the specification as originally filed. Applicant believes that none of the elements recited in these new claims are taught or suggested by the prior art. Accordingly, Applicant respectfully requests early notice of allowance of said claims.

*Conclusion*

Applicant respectfully submits that each and every pending claim of the present invention meets the requirements for patentability under 35 U.S.C. § 103, and respectfully requests that the Examiner indicate allowance of each and every pending claim of the present invention.

In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipate or render obvious Applicant's invention as recited in each of Claims 1, 3-7, 11-14, 16-20, 24-26, and 28-37. The applied references of record have been discussed and distinguished, while significant claim features of the present invention have been pointed out.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

If any additional fee is required, please charge Deposit Account Number 19-4330.

Respectfully submitted,

Date: 10-4-07

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